

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Acceleration of Broadband Deployment)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of)	
Broadband Deployment by Improving Policies)	
Regarding Public Rights of Way and Wireless)	
Facilities Siting)	

COMMENTS OF TOWN OF NORMAL

Town of Normal, Illinois files these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. Through these comments, Town of Normal seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices and charges.¹ The Commission should not interfere with these local policies. Town of Normal has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. We believe that a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission’s limited expertise on local land use matters all point to the same conclusion: this is no place for federal regulation.

¹ We use the term “charges” to include both any cost recovery that is part of right-of-way and facility management (such as permitting fees), as well as other compensation we may receive from communications companies for use of the rights-of-way and other facilities consistent with state and local law.

Town of Normal has successfully managed its property to encourage deployment of several broadband networks to date. As a result, broadband service is available to 100 per cent of the households and businesses in our jurisdiction. There is no evidence that our policies or charges with respect to placement of facilities in the rights-of-way or on City property (such as water towers) have discouraged broadband deployment. Our community *welcomes* broadband deployment, and our policies allow us to work with any company willing to provide service. No company has cited our policies as a reason that it will not provide service. We believe our policies have helped to *avoid* problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. Broadband internet services are supplied locally by Comcast and by Frontier (successor to Verizon locally) and other private providers. Additionally the Town of Normal is cooperating with other governmental units and major companies, pursuant to a federal grant, to install an extensive fiber optic system in the community that will provide high speed internet and other voice and data services. This project, known as Central Illinois Regional Broadband, will also provide broadband access to rural communities within the region. Additionally the Town of Normal has amended its zoning code to provide expedited approval for cell tower sites within certain zoning districts. On the other hand, we also know that many entities seeking access to our rights-of-way and facilities would prefer to live without rules or regulations, to the great detriment of other users, abutting landowners, commuters, and the general taxpayer.

In response to the NOI, Town of Normal provides the following information:

I. Application Procedures, Forms, Substantive Requirements, and Charges.

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.²

Town of Normal applies the following right-of-way management and facility placement procedures. For work within the right of way a permit is required from the Town Director of Public Works. This permit is promptly granted; usually within 72 hours. The permit process is designed to assist the provider in installation of facilities, protect public safety during construction and assure restoration of the site following completion of the work. No provider has ever complained that this permit process delays or obstructs work. The Town code can be found on the internet at www.normal.org. The right of way permitting process is in Chapter 8 Divisions 1, 2 and 6. The Town also encourages placement of cell towers on Municipal Property (non-right of way). Currently the Town leases four sites to cell tower providers. Multiple providers are on the cell tower sites providing coverage throughout the community. The Town also has amended its zoning code (Found at Chapter 15.15-1) in order to allow cell towers in A-Agriculture , S-1 University and S-2 Public Lands, zoning districts. In all other non-residential zoning districts cell towers are allowed subject to a special use hearing process. Small telecommunication antennas are allowed in residential zoning districts as a matter of right and on Town right of way or Town easement by agreement. Processing fees are minimal for a special use permit. Additionally the processing time is short, typically less than sixty days.

II. *Sources of Delays.*

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications.³

² NOI ¶ 14.

In Town of Normal most applications are processed very quickly. However, in some cases, the applicant delays in submitting requested information such as a plat when needed to create a new lot of record for a cell tower site. Often this delay is occasioned by the applicant's agent in preparing paperwork rather than town caused delay.

III. Improvements.

The Commission asks whether there are particular practices that can improve processing.⁴

Town of Normal has implemented a number of practices that have improved the process. For instance, the town code and application forms are now online. This feature expedites the delivery of information and filing of required documents. Also, the Town of Normal holds a weekly Development Committee meeting attended by all town department directors. This allows the applicant to meet one time with all departments and streamlines the application process. Town staff has designated one person to communicate directly with the applicant and assist the applicant in processing any work requiring a town permit. This hands on approach assists the applicant and the town in expediting the approval process

IV. Permitting Charges.

The Commission seeks data "on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees." Specifically, the Commission asks commenters to identify:

A. the type of facilities for which such charges are assessed;

³ *Id.*

⁴ NOI ¶¶ 14, 29.

- B. how such charges are structured (e.g., per foot or percent of revenue in the case of rights of way fees);
- C. whether the community is subject to comprehensive state franchising or rights-of way-laws;
- D. whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and
- E. the value of any in-kind contributions required for access or permit approval.

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.⁵

Town of Normal charges ten dollars for a permit to work in town right of way. Town of Normal charges a processing fee of \$300 to process a special use permit or site plan in connection with a cell tower facility. The Town of Normal is not subject to comprehensive state franchising or rights of way laws, however the Illinois Supreme Court has ruled that individual municipalities may not require a franchise agreement for telecommunication facilities in municipal rights of way. All charges assessed by the town are readily available on the town web site www.normal.org. The town requires a lease agreement for a cell tower provider or other broadband provider to occupy property owned by the town that is not considered street right of way. For instance the town has cell towers located at a fire station, a water tower, a water treatment plant and a public works garage. All of these locations are leased by the town to the providers at a mutually negotiated fair market rent.

These charges are important because town staff spends considerable time working with applicants to process a special use permit or a site plan. Legal notices must be published, public hearings held and documents reviewed. The permit fee of \$10 to work in town right of way

⁵ NOI ¶ 17.

does not come close to covering actual town staff time spent to review the project, inspect the work, and assure restoration of the property.

V. *Local Policy Objectives.*

The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area.⁶

In Town of Normal our policies are designed to achieve the following:

1. Facilitate responsible deployment of services;
2. Make services broadly available;
3. Ensure public safety;
4. Avoid traffic disruption;
5. Maintain and repair roadways;
6. Prevent damage to abutting property;
7. Minimize deterioration of public streets;
8. Obtain fair compensation for use of Town owned property (cell tower site on municipal property non right of way.)

VI. *Possible Commission Actions.*

Finally, the Commission asks what actions the Commission might take in this area.⁷

As noted above, Town of Normal, strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would

⁶ NOI ¶ 22.

⁷ NOI ¶ 36.

have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may actually make it infeasible to continue to maintain or provide important public services. If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

CONCLUSION

Town of Normal urges the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. As indicated above, in the Town of Normal our policies and procedures are designed to protect important public interests, and have done so for many years. There is no evidence that the policies have impaired any company from providing broadband service here, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Respectfully submitted,

Town of Normal

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